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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 538

G. L. CHRISTIAN AND ASSOCIATES, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

BRIEF OF ASSOCIATED GENERAL CONTRACTORS OF AMERICA

(AMICUS CURIAE ON BEHALF OF PETITIONER)

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

Pursuant to Rule 42 of the Rules of this Court, Associated General Contractors of America files this brief as an *amicus curiae* with the consent of the parties.

The Associated General Contractors of America, a nonprofit trade association now in its 45th year, is made up of 7,400 of the nation's leading general contractors, many of whom regularly perform prime construction contracts for the U. S. Government. The AGC has traditionally been concerned with relations with the federal procurement agencies and the procurement documents and procedures that are used in connection with these services.

Our first concern is the public interest. If a document, procedure or regulation is ambiguous, unfair or arbitrary, it will in time reduce competition or result in the inclusion in bids of additional costs which the taxpaying public will have to pay. On the other hand, the Government is entitled to and will get ample competition and reasonable prices where the bidding documents and the procedures of the contracting agencies are both fair and equitable. This has been the case through the years in the great majority of dealings with the procurement agencies.

To insure the continuation of this effective working relationship, the AGC maintains advisory committees made up of representative members to consult with federal contracting agencies, such as the Corps of Engineers, Bureau of Yards and Docks, General Services Administration and the Bureau of Reclamation. One of the purposes of these committees is to point out advantages to the Government in eliminating ambiguities or any features of a contract which result in increased cost.

In the subject case, the written agreement entered into by the parties contained no clause permitting the Government to terminate for its convenience. The right of termination is being read into the contract because of the Armed Services Procurement Regulations. However, these Regulations are most voluminous, and they are not readily available to bidders. Moreover, even a lengthy and careful study of these Regulations, and of the court decisions and other rulings thereunder, leaves the question here at issue completely in doubt.

The Associated General Contractors of America thinks this sort of uncertainty is unfair, unreasonable,

and unnecessary. If continued, it will destroy the confidence that bidders have in the provisions of the documents they receive from the Government as their invitations to bid. If the United States Government, in this instance contracting through the Corps of Engineers, wished to have the right of termination for its own convenience, without liability for common law damages, it should have so stated, as it does in other contracts when the right to termination for convenience is desired. This erratic kind of housekeeping by the Government should not be allowed to continue or be encouraged by the courts.

From the standpoint of our national association, speaking for its members and in discharge of our public responsibilities, we feel that liabilities arising out of strained interpretations, and unclear and questionable incorporation in contract documents of departmental regulations, should be denied. The Government should be compelled to state clearly its requirements so that all bidders may know their obligations as well as their rights. From the standpoint of better bidding procedures and clearer understandings, we support the petitioner. The Government wrote the contract, the ambiguity is entirely of its own making, and the reasonable interpretation of the petitioner should prevail.

For the foregoing reasons, the Associated General Contractors of America believes that a writ of certiorari should be issued in this case.

Respectfully submitted,

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